

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GINA HERNDON,

Plaintiff,

vs.

SAN DIEGO POLICE DEPARTMENT,

Defendant.

CASE NO. 10CV1441 DMS (JMA)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING COMPLAINT
WITHOUT PREJUDICE FOR
FAILING TO STATE A CLAIM
UPON WHICH RELIEF CAN BE
GRANTED PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)**

Plaintiff, a non-prisoner proceeding *pro se*, has submitted a Complaint, Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed *In Forma Pauperis* (“IFP”), and a request for appointment of counsel.

Motion to Proceed IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). This Court finds Plaintiff’s affidavit of assets is sufficient to show she is unable to pay the fees or post securities required to maintain this action. *See* Civil Local Rule 3.2(d). Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a).

1 **Sua Sponte Screening per 28 U.S.C. § 1915(e)(2)**

2 Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person
 3 proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and
 4 dismissal by the court to the extent it is frivolous, malicious, fails to state a claim upon which relief
 5 may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §
 6 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C.
 7 § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
 8 (en banc). Prior to its amendment by the Prison Litigation Reform Act, the former 28 U.S.C. §
 9 1915(d) permitted *sua sponte* dismissal of only frivolous and malicious claims. *Id.* at 1130. The
 10 newly enacted 28 U.S.C. § 1915(e)(2), however, mandates that the court reviewing a complaint filed
 11 pursuant to the IFP provisions of section 1915 make and rule on its own motion to dismiss before
 12 directing that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*,
 13 203 F.3d 1127 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma
 14 pauperis complaint that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194
 15 (9th Cir. 1998) (noting the “the language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule
 16 of Civil Procedure 12(b)(6).”).

17 As currently pleaded, Plaintiff’s complaint is subject to *sua sponte* dismissal under 28 U.S.C.
 18 § 1915(e)(2)(B)(ii) because it fails to state a claim upon which relief may be granted. Plaintiff’s
 19 Complaint consists of a one paragraph statement indicating that several police officers antagonized
 20 her and refused to process a report. Plaintiff does not indicate what claims she is asserting. The “Civil
 21 Cover Sheet” included with Plaintiff’s Complaint indicates she is suing for slander, harassment, failure
 22 to file, and falsifying information, but these are not listed in the Complaint. Further, if those are the
 23 claims she is asserting, they do not provide a basis for this Court to exercise jurisdiction over the
 24 matter. Plaintiff’s Complaint also lacks factual detail regarding the alleged incident. Accordingly, the
 25 Court hereby finds that Plaintiff’s Complaint must be dismissed for failing to state a claim upon which
 26 relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Calhoun*, 254 F.3d at 845; *Lopez*, 203 F.3d
 27 at 1127.

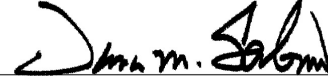
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1 **Conclusion and Order**

2 For these reasons, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Proceed IFP is
3 **GRANTED** and the Complaint is **DISMISSED** without prejudice for failure to state a claim.¹

4 **IT IS SO ORDERED.**

5 DATED: August 31, 2010

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HON. DANA M. SABRAW
8 United States District Judge
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28 ¹ In light of the Court's dismissal of Plaintiff's Complaint, the Court denies Plaintiff's request for appointment of counsel as moot.